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October 22, 2020

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Filing Room  
Harrisburg, PA 17120

Re: EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC v. National Fuel Gas Distribution, Docket No. C-2020-3019621; **JOINT MOTION OF JOINT COMPLAINANTS AND NATIONAL FUEL GAS DISTRIBUTION CORPORATION FOR A PROTECTIVE ORDER**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Joint Motion of Joint Complainants and National Fuel Gas Distribution Corporation for a Protective Order in the above-referenced matter. Copies of the Motion have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart  
Bryce R. Beard  
*Counsel for the NFG NGSS*

TSS/jld  
Enclosure  
cc: Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil and Gas	:	
Company, Mid American Natural	:	
Resources LLC, and Total Energy	:	
Resources LLC,	:	Docket No. C-2020-3019621
Complainants	:	
v.	:	
	:	
National Fuel Gas Distribution	:	
Corporation,	:	
Respondent	:	

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**JOINT MOTION OF JOINT COMPLAINANTS AND NATIONAL  
FUEL GAS DISTRIBUTION CORPORATION FOR A PROTECTIVE ORDER**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

The Joint Complainants (EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC and Total Energy Resources LLC) and National Fuel Gas Distribution Corporation (“Distribution”) hereby jointly request that the attached Protective Order be entered in the above-captioned proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a). In support thereof, the parties state as follows:

**I. Procedural History**

1. On April 27, 2020, The Joint Complainants filed the above-captioned Complaint against National Fuel Gas Distribution Corporation (“Distribution”).
2. On May 20, 2020, Distribution filed an Answer to the Complaint.
3. The Parties are engaging in the discovery process in this proceeding.
4. Proprietary Information within the definition of 52 Pa. Code § 5.365 has been requested during the course of this proceeding, which justifies the issuance of a Protective Order. Parties have sought information that is customarily treated as sensitive,

proprietary, or highly confidential, including information regarding the costs and data security practices and experience of the Joint Complainants. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted disclosure of such information would not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365 and in Administrative Law Judge or Commission Orders granting relief pursuant to said regulation.

5. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the party and the party's competitors. 52 Pa. Code §§ 5.365(a)(1)-(3).

6. The attached proposed Protective Order defines three categories of protected information. The first is "Confidential," which is defined in Paragraph 3 of the attached proposed Protective Order as "those materials that customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury." The second is "Highly Confidential," which is defined in Paragraph 3 of the attached proposed Protective Order as "those materials that are of such a commercially sensitive nature or of such private, personal nature that the producing Party

is able to justify a heightened level of confidential protection with respect to those materials.” “Highly Confidential” materials also include information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4. The third is “EXTREMELY SENSITIVE MATERIALS,” as defined in Paragraph 3, those materials that are subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 and are of such an extremely sensitive security nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials.

7. Distribution has indicated a heightened concern regarding discovery into its critical infrastructure and information technology systems. While the Complaint presents the issue of the reasonableness of Distribution’s Tariff Supplement No. 207 and the impacts thereof on the Joint Complainants, Joint Complainants recognize the potential national security and public safety implications that certain information regarding Distribution’s information technology systems may pose if sought in discovery. This may include details on Distribution’s information storage systems and access, information regarding critical information technology hardware, software and networks, and other information that, if disclosed, would be reasonably likely to jeopardize Distribution’s information technology systems and make them vulnerable to malicious actors intending to harm national security and the public safety. Therefore, the heightened classification of “EXTREMELY SENSITIVE MATERIALS” is appropriate so long as it is not abused. Such a designation has been previously employed before the Commission in *Flynn et al. v. Sunoco Pipeline L.P.*, Docket No. C-2018-3006116, Amended Protective

Order (Order entered June 6, 2019)(ALJ Elizabeth Barnes). In that case, “EXTREMELY SENSITIVE MATERIALS” were designated as materials under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 that revolved around critical pipeline infrastructure and information that, if released, would create infrastructure security and national securities issues that could “greatly endanger the public and national security.” *See Flynn et al. v. Sunoco Pipeline L.P.*, Docket No. C-2018-3006116, Sunoco Pipeline L.P.’s Motion for Amended Protective Order (Motion dated April 17, 2019). To the extent that Distribution believes this case may require the production of such extremely sensitive discovery information that would impact their critical infrastructure security, national security, or that would greatly endanger the public, Joint Complainants are agreeable to such heightened designation, while noting its concerns with the potential abuse and over-designation that a heightened designation may allow. Over designation of “EXTREMELY SENSITIVE MATERIALS” would prejudice the rights of the Joint Complainants, and thus frustrate the prompt and fair resolution of this proceeding. In the event such prejudices occur, Joint Complainants reserve the right to file a motion for an amended protective order.

8. Paragraph 17 of the proposed Protective Order protects against overly broad designations of protected information by giving all Parties the right to question or challenge the confidential or proprietary nature of the “Confidential” or “Highly Confidential” information, or “EXTREMELY SENSITIVE MATERIALS.”.

9. Limitation on the disclosure of “Confidential” or “Highly Confidential” information, or “EXTREMELY SENSITIVE MATERIALS” will not prejudice the rights of the participants, nor will such limitation frustrate the prompt and fair resolution of this

proceeding. The proposed Protective Order balances the interests of the Parties, the public, and the Commission.

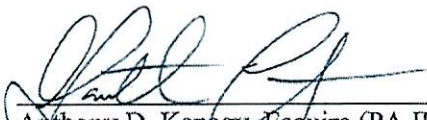
10. The Joint Complainants note that they have provided an advance copy of this Motion and Protective Order to Distribution and Distribution has joined in the filing of this Motion.

11. The attached proposed Protective Order will protect the proprietary information while allowing the Parties to use such information for purposes of the instant litigation.

**REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, the Joint Complainants and Distribution respectfully requests that the assigned Administrative Law Judge grant this Motion for Protective Order and issue the attached Protective Order pursuant to 52 Pa. Code § 5.365(a).

Respectfully submitted,



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*Counsel for National Fuel Gas Distribution Corporation*



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*Counsel for EnergyMark LLC, Vineyard Oil and Gas Company, Mid American Natural Resources LLC, and Total Energy Resources LLC*

Date: October 22, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil and Gas	:	
Company, Mid American Natural	:	
Resources LLC, and Total Energy	:	
Resources LLC,	:	Docket No. C-2020-3019621
Complainants	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation,	:	
Respondent	:	
	:	

**PROTECTIVE ORDER**

Upon consideration of the Joint Motion for a Protective Order that was filed by the Joint Complainants (EnergyMark LLC, Vineyard Oil and Gas Company, Mid-American Natural Resources LLC and Total Energy Resources LLC) and National Fuel Gas Distribution Corporation (“Distribution”);

IT IS ORDERED THAT:

1. The Protective Order is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which have been or will be filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated therewith. All persons previously or hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The materials or information subject to this Protective Order are all correspondence, documents, data, information, studies, methodologies and other materials which are believed by the producing Party to be of a proprietary or confidential nature, and which are so designated by being stamped “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “EXTREMELY SENSITIVE MATERIALS” (hereinafter collectively referred to as “Proprietary Information”). When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be appropriately designated as such for the record.

3. This Protective Order applies to the following materials:

(a) The producing Party may designate as “CONFIDENTIAL” those materials that customarily are treated by that Party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Party or its clients to risk of competitive disadvantage or other business injury;

(b) the parties may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. Moreover, information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ 102.1-102.4 will also be designated as “HIGHLY CONFIDENTIAL”;

(c) the parties may designate as “EXTREMELY SENSITIVE MATERIALS” those materials that are subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§

102.1-102.4 and are of such an extremely sensitive security nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. The parties shall endeavor to limit their designation of information as EXTREMELY SENSITIVE MATERIALS.

4. Proprietary Information shall be made available to counsel for the non-producing Party, subject to the terms of this Protective Order. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination or argument in this proceeding and not in any other proceedings or matters. To the extent required for participation in this proceeding, counsel for a Party may afford access to Proprietary Information subject to the conditions set forth in this Protective Order.

5. Proprietary Information produced in this proceeding shall be made available to the Commission and its Staff. For purposes of filing or otherwise, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Protected Information shall be permitted only in accordance with this Protective Order.

6. Proprietary Information shall be made available to a Reviewing Representative in this proceeding pursuant to the following procedures:

(a) Information deemed as “CONFIDENTIAL,” shall be made available to a “Reviewing Representative” who is a person who has signed a Non-Disclosure Certificate and who is:

- (i) an attorney who has made an appearance in this proceeding for a Party;
- (ii) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Paragraph (i);
- (iii) an expert or an employee of an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding;
- (iv) employees or other representatives of a Party appearing in this proceeding with significant responsibility for the docket; or
- (v) a person designated as Reviewing Representative for purposes of Confidential Information pursuant to Paragraph 11.

(b) Information deemed as “HIGHLY CONFIDENTIAL,” may be provided to a “Reviewing Representative” who has signed a Non-Disclosure Certificate and who is:

- (i) attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or a counsel who has made an appearance in this proceeding for a Party;
- (ii) an attorney, paralegal, or other employee associated for purposes of this case with an attorney described in Paragraph (i);
- (iii) an outside expert or an employee of an outside expert retained by a Party for the purposes of advising, preparing for or testifying in this proceeding;
- (iv) a person designated as a Reviewing Representative for purposes of Highly Confidential Information pursuant to Paragraph 11.

(c) Information deemed as “EXTREMELY SENSITIVE MATERIALS.” will be provided for inspection or in-person review to the same persons constituting Reviewing Representatives under paragraph 6(b) of this Order. “EXTREMELY SENSITIVE MATERIALS.” will only be provided through in-person review at either the offices of Post & Schell, P.C. at 17 N. Second Street, 12th Floor, Harrisburg, PA 17101, or upon request of a party to this action, at another location designated by National Fuel Gas Distribution Corporation (“Distribution”) in the Harrisburg-metro, Pittsburgh-metro, or Erie-metro areas of the Commonwealth, between the

hours of 9AM to 5PM, Monday – Friday. Request to view such information shall be made to Anthony Kanagy via email (akanagy@postschell.com) at least 72-hours prior to the requested viewing session. Such review may be proctored and Reviewing Representatives are prohibited from reproducing such information in any form without the prior authorization of Distribution’s counsel (including taking detailed notes or cell phone pictures). If a party determines that it is necessary to use “EXTREMELY SENSITIVE MATERIALS.” as part of their presentation of evidence in this proceeding, such party shall request a copy from counsel for Distribution, which permission shall not be unreasonably withheld and subject to that party confirming it understands and will abide by the terms of this Protective Order concerning use of such materials. Disputes over the designation of “EXTREMELY SENSITIVE MATERIALS.” or the withholding of copies of “EXTREMELY SENSITIVE MATERIALS.” to the parties must be presented to the presiding Administrative Law Judge for resolution following an expedited opportunity (5-day period) for the other Parties to comment. Resolution of disputes may involve at the discretion of the presiding officer an in camera review of the discovery materials in question.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), the producing Party may, by subsequent motion or objection, seek further protection with respect to “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL” and “EXTREMELY SENSITIVE MATERIALS.” material, including but not limited to, total prohibition of disclosure or limitation of disclosure only to particular Parties.

7. A Reviewing Representative may not be a “Restricted Person.” For the purpose of this Protective Order, “Restricted Person” shall mean: (a) an officer, director, stockholder, partner,

owner or employee of any competitor of the Parties or an employee of such an entity if the employee's primary duties involve the development, marketing or pricing of the competitor's products or services; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of a Party (including any association of competitors of the Parties) or an employee of such an entity if the employee's primary duties involve the development, marketing or pricing of the competitor's products or services; (c) an officer, director, stockholder, owner or employee of a competitor of a Party's customer if the Proprietary Information concerns a specific, identifiable customer of a Party; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a Party's customer if the Proprietary Information concerns a specific, identifiable customer of a Party; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert's interest in the business would provide a significant motive for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order stocks, partnership or other ownership interests valued at more than \$10,000 (excluding mutual funds) or constituting more than 1% interest in a business establishes a significant motive for violation.

8. If an expert for a Party, another member of the expert's firm or the expert's firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person, said expert must: (1) identify for the Parties each Restricted Person and each expert or consultant; (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the Parties or their customers.

The Parties retain the right to challenge the adequacy of the written assurances that the Parties' or their customers' interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.

9. A qualified "Reviewing Representative" for "HIGHLY CONFIDENTIAL" materials subject to special restrictions may review and discuss the "HIGHLY CONFIDENTIAL" material that has been so restricted with his or her client or with the entity with which he or she is employed or associated, to the extent that the client or entity is not a "Restricted Person," but may not share with or permit the client or entity to review the "HIGHLY CONFIDENTIAL" material that has been so restricted.

10. Proprietary Information shall be treated by the non-producing Party and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 12. Information deemed Proprietary Information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

11. Reviewing Representatives may not use information contained in any Proprietary Information obtained through this proceeding to give any Party or any competitor of any Party a commercial advantage. In the event that the non-producing Party wishes to designate as a Reviewing Representative a person not described in Paragraph 6 above, that Party shall seek agreement from the Party producing the Proprietary Information. If an agreement is reached, that

person shall be a Reviewing Representative pursuant to Paragraph 6 above with respect to those materials. If no agreement is reached, the Party shall submit the disputed designation to the presiding Administrative Law Judge for resolution.

12. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate set forth in Appendix A hereto, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative. Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

13. The Parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents "CONFIDENTIAL," "HIGHLY CONFIDENTIAL" or "EXTREMELY SENSITIVE MATERIALS.," or otherwise noting that the materials are subject to special restrictions. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the producing Party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents that constitute or contain Proprietary Information. Upon request from another party, the producing Party shall produce a redacted

(Public) version of any such partially confidential compilation or multi-page document within a reasonable time period. The Proprietary Information shall be served upon the non-producing Party hereto only in an envelope separate from the nonproprietary materials, and the envelope shall be conspicuously marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

14. The non-producing Party will consider and treat the Proprietary Information as within the exemptions from disclosure provided in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), and as within the definition of “confidential proprietary information” in the Pennsylvania Right to Know Law, Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104, until such time as the information is found to be non-proprietary. In the event that any person or entity seeks to compel the disclosure of Proprietary Information, the non-producing Party shall promptly notify the producing Party in order to provide the producing Party an opportunity to oppose or limit such disclosure.

15. Any public reference to Proprietary Information by a Party or its Reviewing Representative shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

16. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including references thereto as mentioned in Paragraph 15 above, shall be sealed

for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the Parties or pursuant to order of the Administrative Law Judge, the Commission or appellate court.

17. The non-producing Party shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and any special restrictions on the review and discussion of such information with a Restricted Person. If a non-producing Party challenges the designation of a document or information as proprietary, the Party providing the information retains the burden of demonstrating that the designation is appropriate.

18. The Parties shall retain the right to question or challenge the admissibility of Proprietary Information; to object to the production of Proprietary Information on any proper ground; to refuse to produce Proprietary Information pending the adjudication of the objection; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order.

19. Within thirty (30) days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty (30) days after appeals are finally decided, the non-producing Party, upon request, shall either destroy or return to the producing Party all copies of all documents and other materials not entered into the record, including notes, that contain any Proprietary Information. In the event that the non-producing Party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the

producing Party, the non-producing Party shall certify in writing to the producing Party that the Proprietary Information has been destroyed.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

EnergyMark LLC, Vineyard Oil and Gas	:	
Company, Mid American Natural	:	
Resources LLC, and Total Energy	:	
Resources LLC,	:	Docket No. C-2020-3019621
Complainants	:	
v.	:	
	:	
National Fuel Gas Distribution Corporation,	:	
Respondent	:	
	:	

**NON-DISCLOSURE CERTIFICATE**

**TO WHOM IT MAY CONCERN:**

The undersigned is the \_\_\_\_\_ of \_\_\_\_\_  
(the retaining party). The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information, and the undersigned is a (check ONE):

- Reviewing Representative for CONFIDENTIAL information.
- Reviewing Representative for CONFIDENTIAL, HIGHLY CONFIDENTIAL information, and EXTREMELY SENSITIVE MATERIALS.

The undersigned agrees to be bound by and comply with the terms and conditions of said Protective Order.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Employer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

**VIA ELECTRONIC MAIL**

Anthony D. Kanagy, Esquire  
Garrett P. Lent, Esquire  
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*Counsel for National Fuel Gas Distribution*



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Todd S. Stewart  
Bryce R. Beard

DATED: October 22, 2020